

## **REMARKS**

Applicants respectfully request reconsideration and withdrawal of the outstanding Office Action rejections in view of the foregoing amendments and following remarks. Applicants would like to express gratitude to the Examiner for indicating present claims 1-4, 6-17, 21-23, 25-30, and 32 as allowable. Claims 5, 18, 24, and 31 have been amended to put the application in better condition for allowance. Claims 33-38 have been cancelled. New claims 39-46 have been added. No new matter has been added.

### **Specification**

The specification has been amended to correct typographical errors and provide clarification. To address the Examiner's requests for clarification, the description of Fig. 1 has been amended by deleting "bar" and inserting "line" and page 13, line 3 has been amended by deleting "died" and inserting "survived".

### **Claim Rejections- 35 USC §112**

Claim 5 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner asserts that because of the open language, "comprising", the nucleotide sequence can have any number of nucleotides on either end of the sequence 211-1722 as shown in SEQ ID NO:1, and as such, can encode amino acids from these unknown regions and therefore the sequence of nucleotides in (b) that are required to encode these unknown amino acids is indefinite. Similarly, the Examiner asserts that embodiment (c) is indefinite because the claimed nucleotide sequence may hybridize to

the unknown regions of (a) or (b). Claim 5 has been amended to recite closed language, "consisting of" and Applicants submit that claim 5 is now definite and believed to be allowable. Applicants respectfully request withdrawal of the rejection of claim 5 under 35 U.S.C. §112.

Claims 18-20 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 18 depends from claim 17 and is directed to a nucleic acid molecule encoding a peptide or polypeptide capable of eliciting an immune response. The Action states that the relationship between the "at least one recombinant nucleic acid" of claim 17 and the "at least one further recombinant nucleic acid" of claim 18 is indefinite concerning whether the molecules are identical or different. Claim 18 has been amended to recite "The cell of claim 17, which further comprises at least one ~~further~~ second recombinant nucleic acid molecule..." Thus, Applicants submit that claim 18 is now definite because it is clear that the at least one second nucleic acid molecule of claim 18 is different from and further to the nucleic acid molecule of claim 17. Claims 19-20, depending from claim 18, should be allowable for at least the reasons above. Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112 and that claims 18-20 be allowed.

Claim 24 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner asserts that the claim is unclear because a) the genus/species of the claimed bacterial cell is unknown, and b) its persistence is to be compared to any unidentified species of Mycobacterium cell whose intracellular persistence varies

greatly. Claim 24 has been amended to depend from claim 15 and specifies that the cell is a mycobacterium tuberculosis cell. Thus, Applicants submit that claim 24 is now definite and respectfully request withdrawal of the rejection under 35 U.S.C. §112.

Claim 31 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Action states that the relationship between the first “at least one” and the second “at least one further” molecule is indefinite concerning whether the molecules are identical or different. Claim 31 has been amended to recite “further comprising inserting at least one ~~further~~ second recombinant nucleic acid molecule...” Thus, Applicants submit that claim 31 is now definite because it is clear that the method of inserting at least one second nucleic acid molecule of claim 31 is different from and further to the method of inserting the nucleic acid molecule of claim 30. Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112 and that claim 31 be allowed.

#### **Claim Rejections- 35 USC §101**

Claims 33-38 are rejected under 35 U.S.C. §101 for not setting forth any steps in the process. Applicants submit that claims 33-38 have been cancelled and the rejection is rendered moot.

New claims 39-46 have been added to further describe an embodiment of the invention and entry of these claims is respectfully requested. Support for claims 39 and 46 can be found on page 8, lines 6-17, support for claims 41 and 42 can be found on

page 9, line 11-17, and support for claims 40, and 43-45 can be found on page 9, lines 19-23 of the specification. Claims 39-46 are believed to be allowable at least for depending from claim 1 which has been indicated as allowable.

In view of the foregoing amendment and remarks presented herein, all of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections, and that they be withdrawn. Early and favorable action is awaited.

Applicant believes that a full and complete reply has been made to the outstanding Office Action and a Notice of Allowance is respectfully solicited.

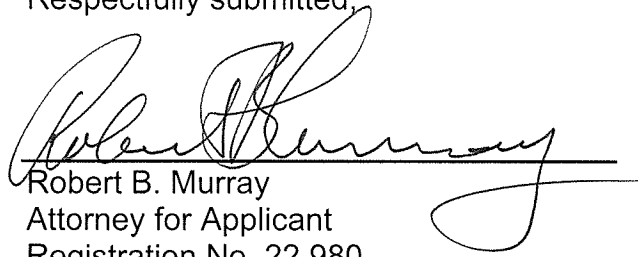
If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

If any extension of time is required in connection with the filing of this paper and has not been requested separately, such extension is hereby requested.

The Commissioner is hereby authorized to charge any fees and to credit any overpayments that may be required with respect to this paper to Counsel's Deposit Account No.02-2135.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "Robert B. Murray", is written over a horizontal line.

Robert B. Murray  
Attorney for Applicant  
Registration No. 22,980  
ROTHWELL, FIGG, ERNST & MANBECK  
1425 K. Street, Suite 800  
Washington, D.C. 20005  
Telephone: (202) 783-6040

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